

## MINUTES

### SALINA BOARD OF ZONING APPEALS

City Commission Room 107

Thursday, April 19, 2007

MEMBERS Funk, Lange, Morse, Sanborn, Schmitt, Wilson and Worth  
PRESENT:

MEMBERS  
ABSENT:

STAFF  
PRESENT: Andrew, Asche, Burger and Herrs

Item #1. Approval of the minutes of the regular meeting of March 15, 2007.

Mr. Wilson stated there is one error I noticed. I didn't see a page eleven. Is there something missing Mr. Andrew? There's a page ten and there's a twelve but I don't see eleven.

Mr. Andrew stated it appears that number eleven got skipped when the packet was collated, because the way it should work is that the facing page should have the odd page eleven and the back side should be twelve. So it appears that maybe when this was run that page eleven was not included in that. So it would seem worthwhile if you want to put off approving these minutes to wait until you have the full packet in front of you. My packet doesn't have a page eleven either. If you would like to put that off until we can furnish you the full set you can do that.

Mr. Wilson asked is there text missing? Is it just an error in numbering or is there an actual page of text missing?

Mr. Andrew stated I believe that it is one of those two and without having the originals down here in front of us we couldn't answer that. If you want to defer this matter we could go back and get the original and see if it's a page misnumbering or a missing page.

Mr. Wilson stated I withdraw my motion.

Mr. Schmitt stated ok, we'll just hold off.

Item #2. Application #V07-3, filed by Dan Sutton, requesting the following variances: 1) a minimum lot depth variance of 30 ft. from 100 ft. (the minimum lot depth in the R-2 zoning district) to 70 ft., 2) a minimum lot size variance of 2,500 sq. ft. from 6,000 sq. ft. (the minimum lot area required in the R-2 zoning district) to 3,500 sq. ft. and 3) a variance to the minimum rear yard setback of 4 ft. from 25 ft. (the minimum rear yard

setback in the R-2 district) to 21 ft. to allow construction of a new single-family dwelling. The subject property is legally described as the North Fifty (50) feet of the South One Hundred (100) feet of Lot Twenty-six (26), and the North Fifty (50) feet of the South One Hundred (100) feet of the East Twenty (20) feet of Lot Twenty-eight (28) on Spruce Street in Phillip's Fourth (4<sup>th</sup>) Addition to the City of Salina, Saline County, Kansas and addressed as 312 S. College Avenue.

Mr. Andrew stated we'll have Mr. Herrs explain the nature of the variance requested here.

Mr. Herrs presented the staff report with visual slides as contained in the case file.

Mr. Schmitt asked does anyone on the Board have any questions?

Mr. Wilson stated yes I have a few questions that have nothing to do with the variance, just more of a matter of interest. The people asked the City to turn off their water and then they moved so I guess that house was vacant for about two years.

Mr. Herrs stated correct.

Mr. Wilson asked if the City turned off the water then the leak must have been on the City side of the system right, from the water meter towards the street, is that where the leak was? It must have been.

Mr. Herrs stated yes. They replaced the meter and the meter pit and did some work and at that time I believe it was the understanding of the City staff that the problem was taken care of and after some time they noticed a pattern in the readings that there was high water usage in this area. Upon further investigation they found that there was some serious water being flowed through the meter and there was indeed flooding inside of the structure.

Mr. Wilson stated so that was really the City's fault I guess is what I'm getting at.

Mr. Herrs stated yes the City had to compensate the owners.

Mr. Wilson asked you had to buy the house then?

Mr. Herrs stated yes, essentially, and then tear it down.

Mr. Wilson stated on that aerial view up there, you see on the left side of College there are four houses. Move your marker down just a little bit. Is that an alley down there? That's the original when the lots faced Spruce,

the lot went all the way down there. Is that an easement or an alley down there?

Mr. Herrs stated yes I believe that it is.

Mr. Morse stated there is an easement there.

Mr. Wilson stated ok.

Mr. Herrs stated that was at one point in time all those houses were essentially one platted lot except for the West 20 ft.

Mr. Wilson stated that is when people had big gardens I guess that faced on Spruce. Well ok. Thank you.

Mr. Funk asked who did Mr. Sutton buy this lot from? It said it was recently purchased from the City.

Mr. Herrs stated I believe the previous land owner still owns the lot. You'll have to verify that with Mr. Sutton.

Mr. Funk stated on this drawing of the Certificate of Survey for a building permit where's the parking or the driveway going to be?

Mr. Morse stated it's on the north side. There's a paved driveway.

Mr. Herrs stated it is right there where John is showing with the cursor.

Mr. Morse stated there is still a garage back there.

Mr. Funk stated that looks pretty narrow.

Mr. Herrs stated actually it's a shared driveway. All four of these lots have shared driveway agreements.

Mr. Funk asked on that concrete pad is there a building on that pad?

Mr. Herrs stated that was the previous garage that was removed when the house was removed.

Mr. Funk asked but the pad is still there?

Mr. Herrs stated the pad is still there.

Mr. Schmitt asked any other questions of staff? Ok, you can step up to the microphone. State your name and address.

Dan Sutton, 2317 Grant Court, I am the applicant.

Mr. Schmitt asked are there any questions for Dan?

Mr. Wilson asked do you have anything to add to what the staff has said?

Mr. Sutton stated I don't think so. I think Dustin did a good job explaining this.

Mr. Wilson stated yeah I agree that the way it is now it is just a vacant lot and putting a house on it would certainly improve that neighborhood.

Mr. Funk asked when did you buy this lot?

Mr. Sutton stated in the middle of February I believe.

Mr. Funk asked from who?

Mr. Sutton stated it was a couple I went to. Linda Hagen was the realtor that was selling it. I met the previous owners just a short time before and wrote them a check. I don't have that information in front of me.

Mr. Andrew stated there was no time that the City actually owned the property. We just compensated them for the loss of the house.

Mr. Schmitt asked is there anything else? There appears to be none.

MOTION: Mr. Sanborn stated Mr. Chairman I make a motion that we approve the three requested variances and approve the property so it could have the house built on it by the applicant.

SECOND: Mr. Worth.

Mr. Wilson stated I think one of the reasons should be like on page four just above number two where it states this was a pre-existing nonconforming condition. It certainly is nonconforming but it is sort of grandfathered in so that's why we can approve this because it is pre-existing.

Mr. Sanborn stated my motion is just that we approve the variances as requested, whether it was pre-existing or not.

Mr. Worth stated there is one thing that I would ask. Is there anyone in the audience that would care to comment on this?

Mr. Schmitt stated there appears to be no one.

Mr. Schmitt stated it has been moved and seconded to approve this variance application. All in favor say "aye", opposed same sign.

VOTE: Motion carried 7-0.

Item #3. Application #V07-4, filed by Galen and Karolen Thacker, requesting a variance to the off-street parking requirements in Section 42-553(1)m. of the Zoning Ordinance to reduce the number of required parking spaces for an apartment building from 30 spaces to 15 spaces. The subject property is legally described as Lots 6, 8 & 10, in Block 5 of the Woodland Addition to the City of Salina, Saline County, Kansas and addressed as 821 N. 2<sup>nd</sup> Street.

Mr. Andrew presented the staff report with visual slides which is contained in the case file.

Mr. Schmitt asked does anyone on the Board have any questions?

Mr. Morse stated yes I have a question. Did you try and estimate about how many additional spots he could get on the south side for parking spaces?

Mr. Wilson stated that's a large grassy area.

Mr. Morse stated yeah that's a large area.

Mr. Andrew stated it is an area that is large but if you look at the driveway arrangement and the width that you would need there and if you create stalls over there you would still need to get out. You could perhaps put two head in stalls there but what you want to avoid is having stalls backing into each other. It is feasible that you could put more stalls there. Do you have an aerial photo John that shows what that area looks like?

Mr. Wilson stated it wouldn't be much worse than it is now to get in to some of those stalls I would think.

Mr. Andrew stated well some of the maneuvering area right now that is there is tight and that is part of our recommendation that they come out along that front Second Street side and that they expand the paving there to have the ability to have a double row of parking with an aisle in the middle.

Mr. Sanborn asked are they required to have two exits? Could one exit be blocked and add another two or three spaces?

Mr. Andrew stated there is not a requirement that they have that. It certainly works well for circulation in terms of getting in and out. If they don't have the second exit then you have to look at different ways you could do that. You could certainly look at which one of those you would close. It might be the south one.

Mr. Sanborn stated obviously the trash trucks are going to have issues getting in and out.

Mr. Andrew state the trash truck needs to get access. I think just the way we looked at it was when it was a motel it needed 16 spaces and it had 16 spaces kind of laid out all on one side and for us the change from that to efficiency apartments that are of same dimensions as the hotel rooms were didn't really change the character or demand for parking spaces much.

Mr. Sanborn stated we have also received a letter, I think all of the Board members have. The question that I have on the letter is that it says "the City turned us down and we couldn't get a variance on off-street parking", have there been other variances requested in the past for this property?

Mr. Andrew stated not that we have any record of. It is correct to say that if Mr. Thacker had done something that required a building permit and a zoning certification that he would not have been able to get a permit to modify these to convert them to apartments because of the lack of adequate parking. At that point in 2004 it could have or should have triggered an application for a variance at that time. What occurred was, that because this conversion was all done with plumbing permits there wasn't any zoning review or zoning certification until after the fact. So there was actually no building permit or zoning review done. We have no record of a previous variance request being denied on this property although it is factually correct that we would tell anybody, including Mr. Thacker, that was going to convert this to apartments that you would need to have 30 spaces for 15 units or 32 spaces for 16 units.

Mr. Sanborn stated actually I was trying to go back several years beyond that when there was a previous owner who sent the letter.

Mr. Andrew stated right and we don't have any record of that.

Mr. Wilson asked how far back do your records go Mr. Andrew?

Mr. Andrew stated all the ones that are readily available probably 1977.

Mr. Wilson asked is it sorted by applicant's name or how would you search for something like that?

Mr. Andrew stated what we do is maintain an address file for every property in the City of Salina. If you have built a structure essentially since World War II there is a building permit record for that and there is a record for everything that has occurred on that property since about 1946 to the present. The way we go back and track additions or track how much

parking was required for a particular use or project is to go back to those plans in the address file.

Mr. Wilson asked so you search by address?

Mr. Andrew stated yes.

Mr. Wilson stated the other thing I was wondering, this used to be a motel room and now you're going to add a kitchenette with a sink and cabinets and of course plumbing, that doesn't require a building permit, it only requires a plumbing permit?

Mr. Andrew stated we're not changing any walls or changing doors, hallways or path of travel. The Building Code actually looks at the occupancy as not changing from a motel to an apartment operation like this. The only thing that really changed here was from a zoning standpoint, the difference for hotels and motels is that you're only required have one space per unit. There are pluses and minuses. We don't see too many ordinances that adjust apartment parking or dwelling parking by number of bedrooms. It is usually done by units. We don't have this come up too often. But the way that would be looked at when a building permit is done, and we had one recently and we had a nursing home that was converted from a nursing home to apartments for the elderly and we have different parking requirements for apartments than we do for a nursing home and that work did require a building permit. So in this case since the walls didn't move and the doors didn't change or the path of travel or exiting, the only thing they needed to do to convert this to full dwelling units was to put in some plumbing lines and plumb the kitchenette and the sink.

Mr. Wilson asked they had to add cabinets and sinks?

Mr. Andrew stated those items don't require anything but a plumbing permit.

Mr. Wilson stated this is one of the problems I've noticed since I've been on this board. We've had several cases where an applicant didn't obtain a building permit or he thought he didn't need one and this situation has come up before. If there was some way for those people before they started the work to be definitely told what they can and cannot do it would save a lot of trouble I would think.

Mr. Funk asked is the apartment complex not fully occupied?

Mr. Andrew stated I do not know whether all 15 rooms are leased or not. That would be something Mr. Thacker would have to address.

Mr. Funk stated I was just wondering because you said you observed it.

Mr. Andrew stated right. We have been observing it and we don't know when we observe it whether only 10 are occupied or not. We have gone up there and taken photographs and taken trips up there and have not found the lot to be full or overflowing.

Mr. Funk asked if the plumbing permit didn't trigger this issue what triggered it now?

Mr. Andrew asked what triggered it now?

Mr. Funk stated yes.

Mr. Andrew stated our awareness that it was now being used as apartments and the fact that it was missed at the time that the plumbing permits were done and it was inspected.

Mr. Funk asked it was just by casual observation somebody caught it?

Mr. Andrew stated no I don't think by casual observation. There was knowledge that now that it was apartments and not a motel that additional parking was a requirement from a zoning standpoint.

Mr. Lange asked is there other paved off-street parking in the area?

Mr. Worth stated I have some comments and questions.

Mr. Andrew asked your question Mr. Lange is you're talking about what is surrounding this area? I think we'll have to go back to the aerial photo.

Mr. Worth stated it might be possible to assign one parking place per unit and then have several as unassigned that if tenants have two cars they could utilize those or if they have visitors they could utilize them. And we talked about the plumbing. I think it was done by a licensed plumber at the time it was done, is that true?

Mr. Andrew stated that is true. Just to give you an idea of how these items are generally done. When you get a full building permit that is going to change the occupancy of a use or a structure and there is a final inspection of that you are going to have fire inspectors, zoning inspectors and building inspectors that all go out to that site. In this case, because it was a plumbing permit, the only inspections that were done were to go out and inspect the plumbing. And that's what that was based on. To get to Mr. Lange's question. The boundaries of what is the motel site extend from here to here. There is a commercial property north of this site.

Mr. Burger stated the northern structure is a storage building.



Mr. Andrew stated the former cafeteria building is here to the east, this is a commercial lot here that is used for a number of purposes. That would be the only other property in the vicinity that could be used for additional parking.

Mr. Wilson asked who owns that former cafeteria building? Is that part of the property?

Mr. Andrew stated it is being converted to a single family home.

Mr. Wilson asked so it's separate?

Mr. Andrew stated it was sold separately.

Mrs. Heitzman, 818 N. 2<sup>nd</sup> Street, spoke from the audience identifying herself as the owner.

Mr. Andrew stated we'll get to the public comment part here in a minute. We're still answering questions.

Mr. Worth asked can the letter from Mr. Frick to Mr. Andrew be put in the records of this meeting? There is a lot of history in here.

Mr. Schmitt asked Dean will you put the letter in?

Mr. Andrew stated anytime we get written correspondence on an application it is attached to the minutes and goes in to the case file.

Mr. Schmitt asked any other questions?

Mr. Andrew stated let's hear from the applicant first and maybe he can tell you about what the occupancy is of the units.

Galen Thacker, 2339 Aurora Avenue, stated I purchased this property and talked to the City about different purposes to use it for and how we were going to run it. We did make the changes. We basically put in a kitchen sink and put in some cabinets on the wall, five foot of cabinets, five foot of base cabinets, a stove and a refrigerator in the units. Occupancy right now is 14 units are full and one is empty. It just went empty on the 10<sup>th</sup> of this month. We're cleaning it up, painting it and it will be back on the market. Every time I've checked the parking lot there has never been over eight vehicles there. Most of these people are either on disability, we rent the apartments as all bills paid, but most of the people are on a limited income, don't have vehicles, a few ride bicycles. I don't know what else I can tell you. I've never seen a car parked on the street in front of the building.

Mr. Schmitt asked are there questions from the Board for Mr. Thacker?

Mr. Wilson stated I have a question. I understand most tenants are on limited income. Is this a subsidized-type building?

Mr. Thacker stated I have one unit that is subsidized by low income housing. So if someone comes along and they want to rent units under low income housing we're not willing to discriminate.

Mr. Wilson stated what I am saying is it is possible for a person of moderate income to rent one of those and they could have two cars perhaps.

Mr. Thacker stated anything is possible.

Mr. Worth stated you would be required by law to rent to anybody who qualified. You can't specify.

Mr. Thacker stated no I can not specify.

Mr. Worth stated so we're going to have to consider that. I still suggest one space per unit plus additional unspecified spaces that are available to tenants or their visitors.

Mr. Sanborn stated I think the issue being there is 16 spaces and 16 apartments so there is no extra spaces to have for additional parking.

Mr. Worth stated the extra spaces are not necessarily adjacent to the apartments but they would be available.

Mr. Thacker stated I would consider adding a few more. But like we said you're trying to get 30 parking spaces. We're not renting two bedroom or three bedrooms where people would have more than one car, more than one vehicle. Right now we can add some spaces over here where the trash container is and a couple three more over there and possibly squeeze one more to the north side where that minivan is.

Mr. Schmitt asked could you buy more property?

Mr. Thacker stated the only property I could probably buy is from Mr. Frick unless I bought the duplex on the south side of it and tore it down for parking. But if I'm going to do that I might as well come back and see if I can kick the people out and zone it for mini-storage. The only difference is their income.

Mr. Schmitt stated yes.

Mr. Thacker stated I've fulfilled the need for a lot of people that are on fixed incomes here and I've thought about building some more apartments

like this here in town on some other property I've been eyeing. But if it's a big major problem to add more parking. Really if I'm going to do that I'm going to stay with single story, if I'm going to have to have more parking.

Mr. Schmitt asked any other questions?

Mr. Funk stated following up on the suggestion here that parking spots being numbered by unit then there could be some extras provided on the grassy area to the south for visitors. That would seem to me that would help the situation. I think somehow we have to deal with this thing when we change uses.

Mr. Wilson stated in the past we've denied applications like this. Should we approve this one and deny another one? That's what kind of bothers me about that. I think Richard has a good idea. Maybe if you assigned, each stall had a parking number and then you had several extras for extra vehicles.

Mr. Schmitt asked beyond what they have up there?

Mr. Wilson stated yes.

Mr. Funk stated there is a good grassy area there and even that driveway could be moved if that would help to get that extra parking at least close to what's needed in keeping in the spirit of the Zoning Ordinance.

Mr. Wilson stated and also last month we had something like this and we heard the same thing. The people who rent now may not have cars but what about several years from now a different type of person rents and they all have cars or have two cars? That's the argument we may have here. In the future you may have a situation where maybe they'll have two cars per unit. You can't just say right now the kind of tenants you have now a lot of them don't have cars. Well that may change.

Mr. Sanborn stated I believe that is covered on page 7 where it says in Item C: "Any significant intensification in the number of vehicles parked on the site, such as trailers, occupants with second vehicles or multiple occupants per unit with individual vehicles. Any changes in conditions would cause this variance to be null and void".

Mr. Wilson asked but how would we know that? Would the City go out there every six months and check that?

Mr. Sanborn stated well obviously they would follow up on a complaint. That would be one way.

Mr. Thacker stated well yeah if there's a complaint they would follow up on it.

Mr. Sanborn asked my question I have sir is that you had pulled a plumbing permit and you did put in a sink and such but you also mentioned that you put in electric ranges I presume.

Mr. Thacker stated yes. There were electrical permits drawn on them.

Mr. Sanborn asked so there was also electrical permits Mr. Andrew?

Mr. Andrew stated yes I think we've noted that in the report. There are fire extinguishers, electrical permits and plumbing permits. From our standpoint if you're looking to distinguish this from what Mr. Wilson is referring to as the forgiveness or after the fact-type variances, the way we would distinguish this is this is more the City staff's fault than it is anything the applicant did because there was not joint communication between the building side and the zoning side within the Development Services Department. So it was more the lack of coordination and good communication with Mr. Thacker on our part than it was anything he did. I was in three of the meetings with Mr. Thacker myself. But when the permits were actually issued and the conversions were actually done, the only inspections that were called for and were done were related to plumbing and electrical work. So the use changed from vacant to occupied efficiency apartments and there was no zoning review of that change. The challenge, I think it was mentioned by Mr. Funk about the change in occupancy, most change in occupancy is really simple, going from an office to a bar, or a restaurant, or taking a warehouse space and putting a recycling center in, or a storefront that becomes a church. Those are relatively easy because under the Building Code and the Zoning Code those are changes in use. But in the residential category under the Building Code, whether this is occupied by people who are motel patrons or whether it's occupied by tenants who are leasing, the Building Code views it as the same. From that standpoint it's not a change in use. The change in use here is somewhat artificial of going from a motel requirement to an apartment requirement when the walls didn't move, the units didn't get bigger, you can't fit more people into the rooms than what you could when it was a motel. So it's somewhat of an artificial distinction between motels and the change to apartments. But from our perspective that's why we have the variance process because not all apartments are equal. Not all apartments are efficiency and studio only. So it's hard to write a parking requirement that is one size fits all.

Mr. Sanborn stated thank you.

Mr. Funk asked I would assume some of your tenants are a married couple?

Mr. Thacker stated yes.

Mr. Funk stated and if they both have a job, which is likely.

Mr. Thacker stated one of them has a job.

Mr. Funk stated likely both of them could have a job.

Mr. Thacker stated likely both of them could, yes.

Mr. Funk stated and then both of them would need a vehicle.

Mr. Thacker stated not necessarily.

Mr. Funk stated not necessarily but very likely. Not very many share them.

Mr. Thacker stated I have three of them and none of the three have a vehicle. Anything is possible. We could quit walking across the street because somebody got hit by a car. Does that mean we're all going to stop walking across the street? No.

Mr. Schmitt asked do we have any additional questions for the applicant?

Mr. Worth stated I have a couple of comments. There is someone in the audience that would like to speak on this. And we can't go back and review entirely what's been done in the past. We're looking at the future and we have to consider the number of parking spaces that might be needed in future years. That's all I have. But I would like to invite anyone that would like to speak.

Mr. Thacker stated I would like to thank the staff for their work and your consideration.

Mr. Schmitt asked does anyone else have any comments?

Ben Frick, 100 N. 5<sup>th</sup> Street, stated I heard a lot of things today. I said most of them myself 15 years ago. Didn't do any good. To answer your question about somebody not having a vehicle. We rent to people and every now and then you run into a few of them that don't have vehicles because they got picked up for a DUI and don't have a license. But then three months later they get their license and the next thing they have is a vehicle. So that comes and goes all the time. I'm also amazed that the pictures showed parking spaces in front of those walkways because of the Fire Department. If you close up one of those driveways how are you going to get the emergency people in? It's something that has to be taken care of. It's a lot quieter over there than it used to be when Focus was there. But that's just kind of the way it went. As far as parking, may I approach? I don't think I have enough pictures for everybody. **(Mr. Frick approached Commissioner's with handouts and pictures)** This is just

one time, at the same time, I can't find the rest of my pictures, we didn't start on this until yesterday, this is on the east side of 2<sup>nd</sup> Street. On the west side there were also cars parked and at the time they were putting the decals on the cabs because this person lived at that location and they were running a cab company out of there. How he was doing that I don't know. But a few months later he did leave. If you postpone it for any reason I would say in a week or two I could come up with all the pictures that's happened over a period of time. If you're going to have a business like that it's going to make it kind of tough on the rest of us. Also, if it is approved you're going to see me up here a lot. The Phoenix downtown if we switched to using those units as efficiencies without a motel license we were going to have to reduce the occupancy or the number of rooms to 79 if I remember correctly. We didn't have enough parking to handle the requirements that way. Mr. Thacker can change and go without a motel license. Rocket Square did that a few years ago when they couldn't come up with the parking they needed. There are reasons why these things are on the books I guess or just get rid of them all together and then we wouldn't be bothering you every week or two.

Mr. Wilson stated I have a question Mr. Frick. The motel license, would that permit someone to rent sort of long term? The people who live there, they might live there a few months or so.

Mr. Frick stated yes, very definitely.

Mr. Wilson asked with the motel license would that allow somewhat long term occupancy?

Mr. Frick stated yes. If you read the Lodging License, our legislators made sure that there was provision in that license for long term. Because they go to Topeka and they want to be able to come under that 30 day grace period and the law is actually read as 28 days and that's only because of February's 28 days. Anything over that is long term and you can do that without any problem. Rocket Square does that and we do that.

Mr. Wilson asked what is this Rocket Square? Where is that property?

Mr. Frick stated on the corner of Broadway and Cloud Street. It used to be Rocket Square Motel and then they changed it to apartments. I don't know if the sign has ever been changed. What happened was the reason they lost so much parking was because another business moved in selling cars and they were taking up parking spaces and there was no place for the people coming in to park. Now they have to park down the street because it gets so full. Mr. Worth has a good idea as far as assigned parking spaces. But you're going to have to get an awful tough person out there to monitor that because we've never been able to keep them parking where they're supposed to park. In our situation the way we keep down

problems, we always get an insurance certificate on every vehicle that comes into our property, who are living there. If you come in and sign up and want to live there a month we get a copy of their insurance certificate. That way we have more of an idea of what's going on and what's happening. If they tell us that they're on a DUI and they have no car, which is fine that happens, then they have to bring it in whenever they are released from that charge. So there are ways to monitor that. I don't mean this as an impossible arrangement. When Focus on the Future was there, to give you a little history on that, we originally wanted to convert it and couldn't because of the parking. So then we went ahead and bought the property next door. In the process of buying that Mary and Bart Tannahill come along and wanted to open Focus on the Future and that was kind of workable. As their people grew or their facility grew then they would rent space from us all of the time. And that worked fine as long as they were involved in it.

Mr. Schmitt asked any other questions?

Mr. Wilson stated it's getting more and more complex I think with all of these different factors.

Mr. Funk asked Dean we did have a picture of the Flamingo Hotel?

Mr. Frick stated yes it is.

Mr. Funk stated I noticed a lot of activity going on there. Is that being remodeled or reshaped? Is that turning into apartments?

Mr. Frick stated the only apartments that we have been there for 25 years. In fact some of them have been there since Jim and Patricia Wymore used to stay there. Those have been there since the Catlin's turned it over to Jim Wymore.

Mr. Funk asked is that an apartment complex now or is that still under a motel license?

Mr. Frick stated it's under a motel license. That's the only way we were able to fit it. In fact if you read the papers quite a few years ago I was sued several times, I was chastised for it, I paid a fine on account of it and I was required to get a motel license and I had to go through the procedure to do that.

Mr. Funk asked do you own that property?

Mr. Frick stated yes.

Mr. Sanborn stated it sounds like there may be a solution here. After any other people have questions for Mr. Frick I'd like to talk to the applicant again.

Mr. Frick stated I have another item. At the auction they made mention that if you were going to do anything to this property it had to be rezoned or there were other requirements for it. Because we were there bidding on it and know it was brought up because of the uniqueness on how this was laid out. We still have all the telephone lines at the other complex that goes across there. They have never been changed, they are still there and all that stuff is available. I don't know how you're going to monitor the number of people because of the housing requirements. Dean might have an answer to that. I know we have a problem with that all of the time and we have to watch that very closely. Thank you.

Mr. Schmitt stated Mr. Thacker please come up here.

Mr. Andrew stated let's hear from any other interested parties before we hear from the applicant again. See if there is anybody else in the audience that would like to comment.

Mr. Schmitt stated ok.

Nina Heitzman, 818 N. 2<sup>nd</sup> Street, stated I'm the one that bought the dining hall. Right south of the Flamingo is a garage. Ben owns that garage which I've been trying to buy and he won't sell it to me. My house is the second one there. That's where I live. I didn't know Mr. Thacker until the night of the auction and I really don't even know him now. But I do know the situation that is over there now, there is absolutely no parking has ever been in the street. Because I live there, in and out of there, and I'm home a lot of the times and I have never seen an overloaded parking lot. When the gentleman that was working on Mr. Thacker's studio apartments there I would go over there and you would be amazed how nice those are. I wouldn't even mind living in one of those because they're that nice. As far as parking, the parking he has there now seems to be sufficient because there has never been, there might have been one time a car parked along the street but he was up to visit somebody and wasn't there very long. I sit outside and I saw this because I live right across the street. It's a nice motel and it has security lights and I don't see any problem with the way it is now. Some of these people you know they don't have cars. You see them walking or somebody comes and picks them up. Like I said, I've never seen the parking lot full at any time that I've lived there.

Mr. Schmitt asked any other questions?

Ms. Heitzman stated and about the comment that Mr. Frick made about everybody at the auction. He might have been aware of this but I was not aware that this had to be rezoned or reclassified. Because when I moved



into my house I think it took me two or three years, two years at least, to get a permit to live in my house because it was zoned as a residential dining hall. No one told me I had to go to all this expense to change everything or I wouldn't probably have bought it. I knew nothing about that when I bought that dining hall. Ok.

Mr. Schmitt asked anyone else?

Mr. Thacker asked could I look at that picture?

Mr. Schmitt asked pardon?

Mr. Thacker state that picture that Mr. Frick gave you. **(Mr. Thacker stepped up to the bench to view the photo)**. This gentleman lived there for probably one month. He came into town and came over to the City here, someplace, got a cab license and ran it out of this address. How he did it I don't know. I thought you needed a special permit or something to be zoned in a business area. He got one, he was a little bit different. He got phone bills that came and things in the mail that was left there in different names. He was kind of shady but he was just different.

Mr. Sanborn stated thank you for coming back up to the podium. My question is there seems there be a win-win situation for us on the Board and for yourself. Have you considered getting a hotel license where this would not be an issue? And then we would not have to vote on whether your parking is adequate or not?

Mr. Thacker stated no.

Mr. Andrew asked could we as a staff ask how that could possibly be beneficial in this case?

Mr. Sanborn stated the beneficial part being is that if we decided that this was a variance that we would approve then we have set a precedent which has already been noted by previous individuals that there may be a flood here trying to get the same variances so that they would also not have to have a hotel license.

Mr. Andrew stated as a staff I don't think that would concern us. There's a couple facts here that I think need to be placed into evidence here. One, talking about a variance is not the same as applying for one. There has never been a variance applied for for any motel conversion to reduce the number of parking stalls to convert them to apartments until this case. There is no previous case, there were no denials, there are no other cases. The motivation is this, if you have a motel the County Appraiser classifies you as commercial property and you pay property tax based on 25% of your assessed value. If you are apartments or residential use you are classified as residential property and you pay taxes at 11.5% of your

assessed valuation. So one of the disincentives to being a hotel or motel instead of being an apartment is that you become a commercial classification instead of a residential classification. So there is a disincentive to do that. The qualifier is that if you wish to take an old motel and you want to turn that into dwelling units that you can rent out long term as a landlord-tenant relationship, what you have to do is do what Mr. Thacker did and put eating, cleaning and cooking facilities in the rooms so that residents can live there, cook there and clean up after themselves. If you aren't willing to do that or it's not feasible to do that with a motel room then you're pretty well stuck being a motel. So the reason that this case is here is that Mr. Thacker has actually done that and has taken motel rooms that had no such facilities and put them in. The city's Minimum Housing Code requires that if you're going to rent something out as a dwelling it has to be a dwelling, meaning that it has those features in it. If you are living in a motel you are in a licensed facility that is licensed by the State of Kansas and you are there as a guest. If you are in apartments you are a tenant and you're paying rent and you have a lease. If you are living in a motel you don't have a lease because you're not a tenant. Not necessarily by choice, staff has become some expert in this matter of motels and when they become residential and when they are commercial. I just want to re-emphasize that in this particular case Mr. Thacker has done everything right that he was supposed to do except for our job of flagging this and saying hey wait a minute. I think what would have happened in 2004, because I was here then, if we had flagged it at that time we probably would have advised him to come before this board and seek a variance and we probably would have recommended the same thing. For single occupancy, because I've seen the size of these rooms and it's a stretch to get two people in there to live in that amount of space, what I would say is that if there are others, Rocket Square is one, Mr. Frick's Flamingo is one and the Phoenix is one, if there are places that served as hotels that had one space per motel room and they came in with the same kind of plan that Mr. Thacker did I think staff would support the same ratio of parking as one per unit and taking into account I think what is missing here is that we don't have anything for guest or visitors. The one to one, the 15 for 15 units doesn't allow a place for guests or visitors. I think we would agree with that. There is no precedent for this where these have been denied on a frequent basis. There just have never been any applied for. The difference, and what's wrong here, is that this should have happened in 2004 when it was proposed for conversion. The other thing is that this used to be zoned C-5 for motels. It was zoned residential for Focus on the Future. It is still residential today so to go back to a motel Mr. Thacker would have to zone it back to a commercial classification. So it's not that simple. I wanted to clarify when we looked at this we didn't see that the character and the occupancy was that much different than when it functioned as a long-stay motel, in terms of the number of people you would have per room. I think where there is room for concern is the fact that 15 spaces does not give you room for guests or visitors.

Mr. Wilson asked should there be a change in the City Code then? That seems to be what you're saying. If we're going to have all these variances come to us and we're going to approve them in the future I think the City Code should be changed.

Mr. Andrew stated we do keep very good records. We've got them all here in a notebook. From 1987 to today there has never been a case like this, similar or identical to this come before the Board of Zoning Appeals. The idea if you think that the Zoning Ordinance is out of whack and we should be basing our occupancy on bedrooms instead of dwelling units, that is a possibility. The other thing is that we treat apartments for the elderly different than we treat apartments for the general population. What we're experiencing now is that we tried to be more lenient on parking for those and people are keeping their vehicles and driving longer than they used to. So properties like the Johnstown Towers and Oakdale Plaza that had enough parking when they were built are now having parking problems because they have a higher percentage of residents that have retained their cars. It's not a perfect science but the purpose of the variance process is so that if you have an apartment complex that is not the same as all the others you could look at that on a case by case basis. Clearly if you don't see anything unique about this apartment complex compared to others or you don't see a hardship as far as not having two spaces per unit then you shouldn't approve a variance. But we looked at this and saw that the efficiency, the small square footage of the spaces, the limited occupancy we saw those as factors that made those different than the Chapel Ridge Apartments out by the mall. In each of these cases you have to evaluate on a case by case basis.

Mr. Schmitt stated Mr. Thacker I think you can sit down now.

Mr. Thacker stated I don't know if I'm ready yet.

Mr. Andrew stated I just wanted to clarify for you that one of the issues is that you can not take a motel and leave the motel rooms just as they are and start renting those out as apartments because they are not apartments. You'd have to do something with the rooms.

Mr. Wilson stated I would think that somebody should have noticed that and told that owner that since you're converting to apartments.

Mr. Andrew stated then that someone should be me. If you want to hold me responsible then that is fine. I was in three meetings with Mr. Thacker when we discussed parking. But if I was sitting here three years ago I would be saying the same thing. I don't think any more than one space per unit is needed.

Mr. Morse stated I have a question for Mr. Thacker, seeing you spent all this time up there. Could you put five spaces for guest parking or visitor parking on that south side?

Mr. Thacker stated I'm willing to work with the staff on this. I've talked about this with staff and recommended a few more of them. Thirty was kind of outrageous because of a place to find them. To refresh your memory a little bit, you just passed a variance for another property where the house clearly would not fit on that lot. You wouldn't let anyone else put a house that size on their lot. But yet you gave the man a variance on it.

Mr. Wilson stated it was a pre-existing condition.

Mr. Thacker stated I'm sorry I don't want to rattle your cages or anything. We discussed this and several different things and I tried to work with Mr. Andrew and so forth. I think he's done a real great job. Maybe he missed something and made a mistake, I've made them and all of you probably have to. Thank you.

Mr. Wilson stated I would feel a lot more comfortable, a couple of people have mentioned, if there were some extra parking places. Maybe if we tabled this for a month. Mr. Andrew would that give you time to talk to the applicant and maybe you could figure out a way to add several more parking spaces in that large grassy area or whatever?

Mr. Andrew stated I think we wouldn't want to necessarily come up with that today. The alternative is alternative #2, instead of granting a variance to reduce it to 15, to approve a lesser variance that would go from 30 to some other number. I would be hesitant to give you a number unless you could look at the site with the applicant and confirm, if you said a minimum of 20 spaces or 21, that we could have a plan that would actually work for that number of spaces. If that's what you would like to see happen I think we would like to work with the applicant to see where and in what dimensions we could get those additional spaces.

Mr. Wilson stated at this time I don't think we could specify a number of extra spaces because that would take some evaluation on your part to look at the area.

Mr. Andrew stated but for you to make a motion to grant a variance it would have to be to go from 30 to some number.

Mr. Morse asked between 15 and 30?

Mr. Andrew stated right. We would need to say that your expectation that was when he was done that he would have a certain number of spaces. I think that we would only be speculating how many more spaces he could

get out of this unless we go out there with him and do some measuring and see how many more and get it up on the screen so that you could see what you're being asked to approve.

Mr. Wilson stated and that's what I was suggesting. If we tabled this for a month and perhaps you and the applicant could go out there and physically measure things and then you could come back to us next month and say that we can add so many parking places or whatever.

Mr. Andrew stated we would want you to see and vote on and approve that plan.

Mr. Wilson asked not now though?

Mr. Andrew stated not now. We would bring it back in a month. I think you should see what it is you're being asked to vote on.

Mr. Worth stated Mr. Chairman, Mr. Frick has something to add I believe.

Mr. Frick stated I would like to see you extend this for 30 days because there has been some mention about some information that I might have said that is false. And I would like to have the chance to bring that to you in 30 days because the boss that used to be at the Planning Commission was Roy Dudark and I definitely know that to do anything at the Phoenix we had to cut down the number of units to fit the parking. And that was spelled out in black and white. And I also know that I ended up going to court because of a motel license and how that happened. That happened in 1989 because that was when our daughter had her accident and we were in Wichita and did not know what was happening here in Salina. We were just kind of doing the best we could. And then the next thing I knew I was in court because of a motel license. So I'd like to see you do 30 days.

MOTION: Mr. Wilson stated Mr. Chairman I move that we table Application #V07-4 until the next monthly meeting to give the staff and applicant time to see what additional parking spaces could be added there and to give one of the citizens time to bring some more information.

Mr. Andrew stated the date on that would be May 17<sup>th</sup>. That is the next meeting date.

SECOND: Mr. Sanborn.

Mr. Schmitt stated it's been moved and seconded that we table this. All in favor say "aye", opposed same sign.

VOTE: Motion carried 7-0.

Mr. Funk stated one last question. Is a handicapped reserved stall required on a complex like this? I noticed you had it on attachment B.

Mr. Andrew stated it depends on if you have ground floor apartments. The requirement for that is based on a building permit. So if I go in and change doorways or do something in the way of a building permit then that triggers that. But you would have to have one space or one unit on the ground floor that was adaptable to be handicap accessible. If that were the case then a handicapped accessible stall would be required. But at this point, no.

Mr. Funk stated the reason I'm asking is because it's on attachment B.

Mr. Andrew stated right. We were kind of helping Mr. Thacker with that. We think it would be desirable to have one space to meet that. So that was our idea.

Mr. Funk stated ok.

Item #4. Application #V07-5, filed by Jones-Gillam Architects and Engineers on behalf of USD #305, requesting a fence height variance of 6 ft. from 4 ft. (the maximum fence height allowed within a front yard) to 10 ft. to allow a 10 ft. chain link fence to be installed on a front property line to enclose a new tennis facility. The subject property is the Central High School campus bounded by Crawford Street, Roach Street, McAdams Road and Front Street and addressed as 650 E. Crawford Street.

Mr. Andrew stated we are not going to present a staff report on this. But this is an advertised public hearing for this request and if there is anybody present that wants to speak to this or provide any information to the Board you should accept that. What occurred with this is that there is a plan that is part of an overall building and campus improvement plan to relocate the tennis courts that are over on Crawford Street today over to the south edge of the campus adjacent to McAdams Road. The requested variance that was filed was to allow a fence that exceeded 4 ft. in height in a front yard area on a residentially zoned lot. What has occurred are there are some historical drainage issues that the school district is working on with their design team. What they indicated to staff was that there was a possibility based on the drainage considerations that the location of the tennis courts could move. So they have requested that this be continued to the May 17<sup>th</sup> meeting to allow them to look at alternate locations. We still think some form of height variance would be needed but the plan that you have in your packets and the location may not be current. That's going to be the extent of our report today. But again we sent notice out to property owners that this was going to be a hearing. So if there is anybody here that would want to present information to the Board you should accept that.

Mr. Schmitt asked is there anybody here who would want to speak on this application?

Mr. Andrew stated if there is no one here then it would be appropriate to make a similar motion that this hearing be continued to May 17<sup>th</sup> to allow them to evaluate their plans.

MOTION: Mr. Funk stated I so move.

SECOND: Mr. Wilson.

Mr. Schmitt stated it's been moved and seconded that we table this item. All in favor say "aye", opposed same sign.

VOTE: Motion carried 7-0.

Item #5. Other matters.

Mr. Andrew stated I think something occurred in the collating of the packet but page 11 just got kicked out of the packet. It was not a misnumbering, there was a page 11. We think it is relevant because there is a question there from Mr. Wilson to the applicant and it's not included in the version you have. Laurie has page 11 for you. Mr. Wilson's question on page 10 related if there is any thought about using that space in the basement and incorporating it into one of the existing apartments. The applicant indicated that that's not something they considered. Then on page 11 it goes on to discuss that we had actually discussed that with the owner of the apartment building on South 2<sup>nd</sup> about taking that space and incorporating it into one of the existing apartments. So if you want to take time to look over the responses there on page 11 that would complete the minutes. If you're comfortable seeing those and voting on the minutes and accepting those then that could be done at this point. If not we will repackage those and send them out on the 17<sup>th</sup>.

MOTION: Mr. Funk stated I move we approve these now that we received page 11.

SECOND: Mr. Morse.

Mr. Schmitt stated it's been moved and seconded. All in favor say "aye", opposed same sign.

VOTE: Motion carried 7-0.

Mr. Andrew state we will be meeting on the 17<sup>th</sup> of May and we will have two of these cases carrying over. It sounds like we may be having double the size of the staff report if we're going to relive history.

Mr. Schmitt stated we are adjourned.

Meeting adjourned at 5:31 p.m.

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Dean Andrew, Secretary

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ATTEST